IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 3

FRANCISCO ROMERO,

Petitioner,

—against—

INTERNATIONAL TERMINAL OPERATING CO., COMPANIA TRASATLANTICA, also known as SPANISH LINE and GARCIA & DIAZ, INC., and QUIN LUMBER CO., INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS COMPANIA TRASATLANTICA, ALSO KNOWN AS SPANISH LINE, AND GARCIA & DIAZ, INC. IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court is reported in 142 F. Supp. 570 and is printed in the Appendix in Petitioner's Brief, pages 40 to 46.

The opinion of the Court of Appeals, Second Circuit, has not as yet been officially reported but is printed in the Appendix in Petitioner's Brief, pages 47 and 48.

STATEMENT OF THE CASE

The plaintiff is a Spanish citizen, domiciled and residing in Spain. At the time of this accident he was a seaman, member of the crew of the M/S "Guadalupe", having signed his shipping contract in Spain for a voyage out of and return to Spain. The vessel had left Spain and had stopped at (in the following order) Hoboken, Havana, Vera Cruz, Havana and Hoboken, when the accident occurred. Its next and final stop was back in Spain.

The answer of Compania Trasatlantica to the plaintiff's amended complaint sets forth four affirmative defenses, the First, Second and Fourth of which read:

"FIRST DEFENSE

18. This Court does not have jurisdiction of this or any suit between this plaintiff and it.

SECOND DEFENSE

19. This Court does not have jurisdiction of the subject matter of this action between this plaintiff and it.

* * * *

FOURTH DEFENSE

21. The plaintiff is a Spanish National and resident of Spain. The vessel on which he was injured is of Spanish registry and ownership. The agreement under which he sailed was signed

in Spain for a round-trip voyage from Spain. The plaintiff by agreement with this defendant agreed that all claims for injuries sustained while in the employ of this defendant were to be controlled, governed, adjudicated, dealt with and fall under the Laws of Spain and particularly the compensation Laws of Spain and were to be adjudicated in Spain or before a representative of the Spanish Government and by said laws and said agreement and by Treaty or Treaties between the United States and Spain. Plaintiff's sole rights are governed thereby and by his contract and plaintiff is limited in asserting those rights as aforestated; that this action cannot be maintained here; that this plaintiff cannot maintain suit against this defendant under the Jones Act or the General Maritime Law of the United States; that plaintiff's sole remedies against this defendant are as aforestated and must be asserted in Spain or before a representative of the Spanish Government."

The defendant Compania Trasatlantica, prior to the commencement of trial moved for a dismissal of the complaint on the grounds set forth in these defenses and each of the other defendants similarly moved.

As the determination of these motions necessitated the resolution of facts the court ordered a pre-trial hearing on the motions.

Despite (1) the admission by Compania Trasatlantica, in its answer that it owned, operated, managed and controlled the "Guadalupe" on May 12,

1954, the day this accident happened, and its denial that Garcia & Diaz, Inc. in any wise owned, operated, managed or controlled the vessel on that day and (2) the denial by Garcia & Diaz, Inc. in its answer that it owned or in any manner operated, managed or controlled the vessel, the plaintiff refused to stipulate as to ownership, operation, management and control of the vessel.

Accordingly, the Court ordered a pre-trial hearing on this question as well as on the questions of jurisdiction and Spanish Law.

At the conclusion of the pre-trial hearing the Court rendered its opinion holding that Garcia & Diaz, Inc. was no more than a "husbanding agent" for the "Guadalupe", "acting in every respect for its principal" Compania Trasatlantica.

As to plaintiff's employment by Compania Trasatlantica, as a seaman on the "Guadalupe", the Court found:

> "Testimony was taken from experts in Spanish law upon which the court finds that under the codes, laws and regulations of Spain, where a seaman sails on a given voyage pursuant to a written contract and subsequently thereafter uninterruptedly, as in this case, remains in the employ of the ship during subsequent voyages, the subsequent service is under all the terms and conditions set forth in the original written contract.
>
> The written contract provided, among other things, that the parties thereto submitted themselves 'to the provisions established by the Codes

of Laws regulating Commerce and Labor as also all other regulations in force.' It also provided '22) In the event of accident occurring during the accomplishment of this Contract, these will be subject to the legislative provisions in force to this effect, as also all such will be complied with regarding social insurance as determined by the Laws.'

The court also finds, on the basis of the testimony of the experts in Spanish Law, that plaintiff has a right, by virtue of his injury, to a pension for life of somewhere between 35% and 55% of his seaman's wages which, if the negligence of the ship owner is established, may be increased by one half. It is also found that under the pertinent Spanish Law, provision is made for plaintiff for the counterpart of maintenance and cure. It is also found that plaintiff's said rights may be asserted by demand upon the Spanish Consul in this city."

And the Court further found that this Spanish seaman who had signed Articles in Spain for a round trip from Spain and return thereto could not maintain a Jones Act cause of action against Compania Trasatlantica, his employer and owner and operator of the "Guadalupe"; that the suit presented no federal questions; and that the diversity between the parties, necessary to afford jurisdiction on the law side of the Court, was lacking. Further, the Court declined jurisdiction of the suit in admiralty as a matter of discretion, stating:

"In the light of the finding hereinabove that under Spanish Law the plaintiff may have compensation for his injury with an additional

amount if the defendant Compania is found to have been negligent, and that plaintiff is also accorded under Spanish Law the counterpart of maintenance and cure and that he may assert his claims to a Spanish Consul here, this court should and does decline jurisdiction even in admiralty as a matter of discretion."

REASONS FOR DISALLOWANCE OF THE WRIT

I. THE PRE-TRIAL PROCEDURE WAS PROPERLY TAKEN BY THE DISTRICT COURT.

As to the objection of the plaintiff that the question of jurisdiction should not be inquired into preliminarily the District Court properly found that the question of the Court's jurisdiction could be inquired into at any stage of a proceeding.

To the plaintiff's contention that the question of jurisdiction was for the jury, the District Court correctly found:

"The Court: I think my concern has been very much dissipated by Professor Moore's comment in Paragraph 38.36 of his Volume V of his Second Edition. He says here categorically and sustains it by a footnote:

'Established doctrine and practice, however, dictate that there is no right of jury trial on the following issues—whether there is jurisdiction of the subject matter such as diversity.'

So that disposes of it, gentlemen. I am going to continue with this pretrial hearing."

As to the plaintiff's contention that the question of what is the law of Spain, was one for the jury, the Court correctly found:

"Then my original recollection as to this question of who decides foreign law was accurate:

Wigmore, in Section 2558 points out that:

'It was generally held at common law that a foreign law is a matter of "fact" i. e., its existence is to be determined by the jury. But the only sound view, either on principle or on policy, is that it should be proved to the judge who is decidedly the more appropriate person to determine it.'

It then goes on to point out, after quoting from some cases:

'By the general trend of professional opinion and legislation, the common law doctrine is being abandoned and the terms of a foreign law become a question for the judge. This result is often nowadays reached by statutes authorizing judicial notice to be taken of foreign law.'"

Respecting inquiry into the question of operation and control of the "Guadalupe" by the defendant Garcia & Diaz, Inc., the District Court inquired of plaintiff's counsel whether he was prepared with

proof on that question and plaintiff's counsel stated he was:

"Mr. Puente: Your Honor, we will only stipulate as to ownership. Plaintiff will only stipulate as to ownership of the Guadalupe.

The Court: Who do you maintain operated and controlled it?

Mr. Puente: Because when the ship——

The Court: Please answer my question. Who do you maintain operated and controlled it?

Mr. Puente: Compania Trasatlantica and Garcia & Diaz.

The Court: Are you prepared with proof on that?

Mr. Puente: Yes, your Honor."

Plaintiff's counsel then introduced into the record all the proof he could ever produce on this question. As to it, the District Court correctly found:

"*As to Management, Operation and Control of the S.S. Guadalupe on May 12, 1954.*

The plaintiff's amended complaint alleges in Paragraph Fifth that defendant Compania operated, managed and controlled the vessel and in Paragraph Sixth that defendant Garcia operated, controlled and managed the vessel. On the basis of the deposition of defendant Garcia, through its treasurer, William Martinez, taken by plaintiff on June 10, 1954, and the contract between defendants Garcia and Compania, it is manifest that defendant Garcia was no more to the vessel than a husbanding agent acting in every respect for its principal, defendant Compania. It appears without contradiction that

neither Garcia nor any stockholder thereof owns any stock in Compania, nor is any director of Garcia a director of Compania, nor does Garcia exercise any control over Compania. It further appears that the relationship between Garcia and Compania originated in 1935 when a partnership, the predecessor of Garcia, commenced representing Compania in this port. That partnership was succeeded by the present corporate defendant, Garcia, and pursuant to a contract made in 1948 between Garcia and Compania, the former has since that time husbanded the latter's vessels in this port. It further appears that defendant Garcia represents as many as ten other Spanish and Cuban ship owners in this port, none of whom is a subsidiary of defendant Compania. It further appears that defendant Garcia did not contribute financially to the purchase or construction of the S.S. Guadalupe. As such agent, defendant Garcia pays the pilot and docking charges and the charges for water and supplies for the vessels of defendant Compania, but all for the account of the defendant Compania. For this service defendant Garcia receives from the defendant Compania commissions, based upon the incoming and outgoing freight and passenger traffic. There was no proof adduced at the pretrial hearing of management, operation, and control by Garcia except as it might arise by virtue of the agency agreement. Nor did plaintiff offer any proof of any negligent act by defendant Garcia within the scope of the agency, contributing to his injury."

II. PLAINTIFF COULD NOT MAINTAIN THIS ACTION AGAINST DEFENDANT COMPANIA TRASATLANTICA.

The claims asserted by plaintiff in the complaint against the defendant Compania Trasatlantica, are for

1. Maintenance and Cure.
2. Damages under the General Admiralty Law.
3. Damages under the Jones Act.

The first two claims, those for Maintenance and Cure and for damages under the General Admiralty Law, are based on and arise under the General Admiralty Law of the United States. They are common law rights and are not based on, nor do they arise out of or under, the Constitution, Laws, or Treaties of the United States. Accordingly, there had to be diversity of citizenship between plaintiff and defendant Compania Trasatlantica for the District Court to have jurisdiction of these claims. As plaintiff is a Spanish citizen and Compania Trasatlantica is a Spanish corporation, diversity did not exist between them.

> *Paduano* v. *Yamashita Kisen Kabushiki Kaisha*, 2d Cir., 1955, 221 F. 2d 615;
> *Jordine* v. *Walling*, 3d Cir., 1950, 185 F. 2d 662.

Accordingly, the Court did not have jurisdiction of these two claims asserted by this Spanish national against this Spanish corporation.

The third and only other claim asserted by this plaintiff against defendant Compania Trasatlantica, is under the Jones Act. The Court did have jurisdiction of a Jones Act cause of action despite lack of diversity as it arises under a law of the United States. However, this plaintiff cannot and does not have a right to bring action under the Jones Act. This is well established.

Gambera v. *Bergoty,* 2d Cir., 1942, 132 Fed. 2d 414, cert. denied, 319 U. S. 742:

> "At the outset we pass it as irrelevant that the libellant is an enemy alien (Petition of Bernheimer, 3 Cir., 130 F. 2d 396), and proceed to the merits. Section 33 of the Jones Act, §688, Title 46 U. S. C. A. does not use the word 'citizen'; it gives relief to 'seaman' eo nomine, leaving it to the courts to define the term more closely. We decided in The Paula, 2 Cir., 91 F. 2d 1001, that a German citizen who had signed the articles in Germany and shipped as a member of the crew of a German ship, could not avail himself of the act. He had chanced to suffer injury while she was in the harbor of New York, a port of call upon a voyage beginning and ending in Germany. The same ruling was made in The Magdapur, D. C., 3 F. Supp. 971, and by Judge Goddard in *Plamals* v. *S. S. Pinar del Rio,* 1925 Am. Mar. Cas. 1309, affirmed in 2 Cir., 16 F. 2d 984, and affirmed on other grounds in 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827. We regard The Seirstad, D. C., 27 F. 2d 982, and *Hogan* v. *Hamburg-American Line,* 152 Misc. 405, 272 N. Y. S. 690, as overruled by *Uravic* v. *F. Jarka Co.,* 282 U. S. 234, 51 S. Ct. 111, 75 L. Ed. 312;

but we also regard it as settled law that alien seamen serving upon foreign ships owned by aliens, and bound upon a voyage which begins and ends outside the United States, cannot sue under the Jones Act for injuries suffered while the ship happens to be stopping at a port of call within our territorial waters" (P. 415).

Taylor v. *Atlantic Maritime Co.*, 2d Cir., 1950, 179 Fed. 2d 597, cert. denied, 349 U. S. 915:

"* * * On the other hand, if the seaman is serving on a foreign ship, and if in addition he has signed articles in a foreign port, obviously there can be no recovery either in tort or in contract, even though, as in The Paula, supra, the injury happens on board ship in an American port" (P. 598).

III. THERE WAS NOT COMPLETE DIVERSITY BETWEEN PLAINTIFF AND ALL DEFENDANTS. THIS WAS A FATAL JURISDICTIONAL DEFECT.

Plaintiff is a Spanish National.

Defendant Compania Trasatlantica, is a Spanish corporation.

Defendant Garcia & Diaz, Inc. is a New York corporation.

Defendant International Terminal Operating Co. is a Delaware corporation.

Quin Lumber Co., Inc. is a New York corporation.

There was not, therefore, diversity between plaintiff and all defendants as the plaintiff and the defendant Compania Trasatlantica, both are of Spanish citizenship. There must be complete diversity between all plaintiffs and all defendants or a District Court cannot take jurisdiction of the action. This defect is fatal to jurisdiction here. An identical situation was presented in *Tsitsinakis* v. *Simpson, Spence & Young and N. C. and A. C. Hadjipateras,* D. C. N. Y., 1950, 90 Fed. Supp. 578. Plaintiff there was a Greek National. Simpson, Spence & Young is a domestic corporation. The other defendants were Greek Nationals. In deciding the District Court did not have jurisdiction to entertain the action, the Court said:

> "The Court of Appeals for this Circuit has indicated that jurisdiction should not be declined where the plaintiff is entitled to the remedial benefits of the Jones Act. *Taylor* v. *Atlantic Maritime Co. et al.,* 2 Cir., 1950, 179 F. 2d 597, 598. Plaintiff does claim in this action under the Jones Act, but this is *a fortiori* impossible from the holding by the Court of Appeals that 'an alien, who signs articles in a foreign port for service on a foreign ship and is injured aboard ship in an American port, may not invoke the Jones Act; The Paula, [2 Cir.], 91 F. 2d 1001.' *Taylor* v. *Atlantic Maritime Co. et al.,* supra, 179 F. 2d at page 598; Cf. *O'Neill* v. *Cunard White Star,* 2 Cir., 1947, 160 F. 2d 446. Therefore the first cause of action based on the Jones Act must be dismissed.
>
> The plaintiff has alleged two other causes of action, his second and third in the complaint, in which jurisdiction could be based only on Section 1332(a) (2) of Title 28 U. S. C. A. which gives

the district courts jurisdiction over actions where the matter in controversy exceeds the sum of $3000 exclusive of interest and costs, and is between 'citizens of a State, and foreign states or citizens or subjects thereof.' It is well settled that in order to sustain jurisdiction of an action based on diversity of citizenship in the federal court, each plaintiff must be capable of suing each defendant in that court. See *City of Indianapolis* v. *Chase National Bank,* 1941, 314 U. S. 63, 62 S. Ct. 15, 86 L. Ed. 47. The courts of the United States have no jurisdiction of a case in which both parties are aliens, *Kavourgias* v. *Nicholaou Co.,* 9 Cir., 1945, 148 F. 2d 96, 97; if both a party plaintiff and a party defendant are aliens the District Court lacks jurisdiction, even though there are other parties in the action, as plaintiffs or defendants, who are citizens of the United States. *Compania Minera y Compradora de Metales Mexicano, S. A.* v. *American Metal Co.,* D. C. W. D. Tex. 1920, 262 F. 183; *Ex parte Edelstein,* 2 Cir., 1929, 30 F. 2d 636, certiorari denied, *Edelstein* v. *Goddard,* 1929, 279 U. S. 851, 49 S. Ct. 347, 73 L. Ed. 994. Since in this action the plaintiff and the two individual defendants (who, it seems, are indispensable to the action) are aliens, the Court has no jurisdiction to entertain the action" (P. 579).

Indianapolis et al. v. *Chase National Bank, Trustee, et al.,* 1941, 314 U. S. 63, at page 69:

"* * * The specific question is this: Does an alignment of the parties in relation to their real interests in the 'Matter in controversy' satisfy the settled requirements of diversity jurisdiction?

As is true of many problems in the law, the answer is to be found not in legal learning but in the realities of the record. Though variously expressed in the decisions, the governing principles are clear. To sustain diversity jurisdiction there must exist an 'actual,' *Helm* v. *Zarecor,* 222 U. S. 32, 36, 'substantial,' *Niles-Bement-Pond Co.* v. *Iron Moulders Union,* 254 U. S. 77, 81, controversy between citizens of different states, all of whom on one side of the controversy are citizens of different states from all parties on the other side. *Strawbridge* v. *Curtiss,* 3 Cranch 267. Diversity jurisdiction cannot be conferred upon the federal courts by the parties' own determination of who are plaintiffs and who defendants. It is our duty, as it is that of the lower federal courts, to 'look beyond the pleadings and arrange the parties according to their sides in the dispute.' *Dawson* v. *Columbia Trust Co.,* 197 U. S. 178, 180. Litigation is the pursuit of practical ends, not a game of chess. Whether the necessary 'collision of interests,' *Dawson* v. *Columbia Trust Co.,* supra, at 181, exists, is therefore not to be determined by mechanical rules. It must be ascertained from the 'principal purpose of the suit,' *East Tennessee, V. & G. R.* v. *Grayson,* 119 U. S. 240, 244, and the 'primary and controlling matter in dispute,' *Merchants' Cotton Press Co.* v. *Insurance Co.,* 151 U. S. 368, 385. These familiar doctrines governing the alignment of parties for purposes of determining diversity of citizenship have consistently guided the lower federal courts and this Court."

IV. PLAINTIFF HAD CONTRACTED THAT HIS RIGHTS WOULD BE GOVERNED BY SPANISH LAW.

In the contract of Employment entered into between plaintiff and defendant Compania Trasatlantica, it was agreed that in case of accident plaintiff's rights and remedies were to be governed by applicable Spanish Laws. The Contract provided:

> "In the port of Bilbao, on the 9th of October, 1953, Mr. Eusebio Aguirre Gavina, native of Baracaldo, province of Biscay, with domicile at Portugalette, 46 years of age, Captain of the Spanish steamer 'Guardalupe', registered at Barcelona, by his own rights and in representation of the Ship-owners of said vessel, 'Compania Trasatlantica', with domicile at Barcelona, and Mr. Francisco Romero Onteirol, 32 years of age, native of Rebordelo, province of Corunna, by profession Deck Hand, whose identity was checked by the corresponding pass-book, agree to sign the present contract in compliance with the following conditions and both parties subject to the provisions established by the Codes of Laws regulating Commerce and Labor as also all other regulations in force.
>
> * * * *
>
> 22) In the event of accidents occurring during the accomplishment of this Contract, these will be subject to the legislative provisions in force to this effect, as also all such will be complied with regarding social insurances as determined by the Laws."

The District Court in its opinion found that these provisions were binding on plaintiff. And the District Court further found that this plaintiff had adequate remedy under the Spanish law which he had agreed would govern his rights against Compania Trasatlantica in the event of injury and that his rights could be asserted by demand upon the Spanish Consul in this City. The expert on Spanish law called by plaintiff and the expert on Spanish law called by defendant Compania Trasatlantica, agreed as to the latter. And Compania Trasatlantica tendered repatriation to plaintiff and made every effort to accomplish his repatriation to Spain where he could freely and easily assert his rights against Compania Trasatlantica. Justice did not, therefore, require the District Court to take any steps to secure these rights to plaintiff in this suit or to make any adjudications thereon in his favor.

Lauritzen v. *Larsen*, 345 U. S. 571:

> "*Inaccessibility of Foreign Forum.*—It is argued, and particularly stressed by an *amicus* brief, that justice requires adjudication under American law to save seamen expense and loss of time in returning to a foreign forum. This might be a persuasive argument for exercising a discretionary jurisdiction to adjudge a controversy; but it is not persuasive as to the law by which it shall be judged. * * *
>
> Confining ourselves to the case in hand, we do not find this seaman disadvantaged in obtaining his remedy under Danish law from being in New York instead of Denmark. The Danish compensation system does not necessitate delayed, prolonged, expensive and uncertain litigation. It is

stipulated in this case that claims may be made through the Danish Consulate. There is not the slightest showing that to obtain any relief to which he is entitled under Danish law would require his presence in Denmark or necessitate his leaving New York. And, even if it were so, the record indicates that he was offered and declined free transportation to Denmark by petitioner" (pp. 589-590).

V. DETERMINATIION OF WHETHER THE DISTRICT COURTS HAVE JURISDICTION IN MARITIME MATTERS WHERE NO DIVERSITY EXISTS IS UNNECESSARY TO A DETERMINATION OF THIS LITIGATION.

Even had the District Court retained jurisdiction and heard the case on the merits, the complaint, as against Compania Trasatlantica, would have been dismissed for (1) this plaintiff cannot maintain suit against Compania Trasatlantica under the Jones Act, and (2) this plaintiff having contracted with Compania Trasatlantica, that in the event of injury, his rights against it would be governed by Spanish Law, could not maintain action against it under the General Admiralty Law of the United States. The reasons therefor are set out under the preceding headings of this brief and are not repeated here.

Accordingly, the question raised by petitioner respecting jurisdiction of the District Courts in maritime matters, where no diversity exists, presents no reason for the granting of a writ. Decision of this question was and remains unnecessary to a determination of this litigation as this plaintiff had no right

in any event to maintain action against Compania Trasatlantica on the causes of action asserted in his complaint.

VI. A DISTRICT COURT NEED NOT GO THROUGH A COMPLETE TRIAL ON THE MERITS BEFORE DETERMINING WHETHER JURISDICTION EXISTS.

Petitioner urges that the decision of this Court in *Lauritzen* v. *Larsen*, 345 U. S. 571, required the District Court to go through a trial on the merits before deciding whether it had jurisdiction and whether plaintiff could maintain action against Compania Trasatlantica.

This Court actually said only:

> "A cause of action under our law was asserted here, and the Court had power to determine whether it was or was not well founded in law and in fact." (p. 575)

Petitioner endeavors to construe this language of the Supreme Court as intending to require a District Court to go through with a complete trial on the merits before deciding whether a cause of action can be maintained under the Jones Act or whether it has jurisdiction of the parties or of the controversy. This would mean that a District Court could never inquire into these questions on motion or until after full trial on the merits. The District Court is a Court of limited jurisdiction. It is, therefore, fundamental that it can and does inquire into its jurisdiction at any time by motion, at pre-trial, during trial or at any stage of a proceeding.

VII. THE SPANISH TREATY DID NOT CREATE ANY RIGHT IN THE PLAINTIFF TO MAINTAIN SUIT UNDER THE JONES ACT OR UNDER THE GENERAL MARITIME LAW OF THE UNITED STATES.

Article VI of the Spanish Treaty referred to by petitioner provides that Spanish subjects "shall have free access to the Courts" of the United States. No appellee here has argued that appellant is not free to bring a suit in an American court. The procedure of American courts is open to him without treaty. An alien has never been denied recourse to our courts.

But Article VI created no substantive right in appellant to maintain action under the Jones Act or under the General Admiralty Law of the United States. It provides only that he shall enjoy "in what concerns

1. arrest of persons
2. seizure of property
3. and domiciliary visits to their houses, manufactories, stores, warehouses, etc.

the same rights and the same advantages which are or shall be granted to the citizens or subjects of the most favored nation".

No other rights under American law, either statutory or at common law, are conferred on appellant by Article VI. Certainly it cannot be argued that the language of Article VI conferred any right in him to maintain action in our courts under the Jones Act. And it can well be argued that the failure to confer

any additional rights to appellant, other than those specified, negatived the existence of any other substantive American right in him or available to him.

Article XXIII of the treaty granted to the Spanish Consuls exclusive charge of the "internal order" of Spanish ships. It reserved to the Consuls and the Courts of Spain the resolution of differences between Captains, officers and crew. Disorders were to be dealt with exclusively by these bodies unless they threatened to cause a breach of peace. American authorities were to furnish aid to the Consuls in searching for, arresting, etc. crew members. Arrests were only to be made on the request of the Consuls, the Spanish authorities or the Courts of Spain. Release of persons arrested was to be made at the mere request of such authorities.

Article XXIII neither establishes nor cuts off any substantive American right to recover for injury. None are even mentioned or referred to in it. It seems senseless, therefore, for appellant to argue that its abrogation restored or created a substantive right in appellant under the General Admiralty Law or under the Jones Act to recover for injury.

Article XXIII did not reserve to the Spanish Consuls, jurisdiction over or settlement of the rights of Spanish seamen arising out of injury aboard Spanish vessels. Such rights are nowhere mentioned in the Article. It is impossible, therefore, for appellant to urge that the abrogation of this Article took away from the Consuls jurisdiction over such rights or that its abrogation created some right under American law in Spanish seamen to recover for injury.

The Court of Appeals correctly held that nothing in the text of Article XXIII conferred any substantive right on plaintiff. And the Court of Appeals also correctly held that nothing in the Article supported Petitioner's assertions respecting the jurisdictional questions involved. (Opinion of Court of Appeals, Petitioner's Appendix, pages 47 and 48).

In no event could the Treaty be construed to waive the jurisdictional requirements of our District Courts (Opinion of Court of Appeals, Appendix to Petitioner's Brief, page 48).

CONCLUSION

It is, therefore, respectfully submitted that the Petition should be denied.

Respectfully submitted,

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